



THOMAS L. GARTHWAITE, M.D.
Director and Chief Medical Officer

FRED LEAF
Chief Operating Officer

COUNTY OF LOS ANGELES
DEPARTMENT OF HEALTH SERVICES
313 N. Figueroa, Los Angeles, CA 90012
(213) 240-8101

BOARD OF SUPERVISORS

Gloria Molina
First District

Yvonne Brathwaite Burke
Second District

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Third District

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Fourth District

Michael D. Antonovich
Fifth District

January 20, 2005

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**DELEGATION OF AUTHORITY TO EXECUTE STANDARD AGREEMENTS FROM THE
STATE DEPARTMENT OF CORRECTIONS FOR OUTPATIENT AND INPATIENT
SERVICES AT DEPARTMENT OF HEALTH SERVICES' FACILITIES**

(1st and 5th Districts) (3 Votes)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Director of Health Services, or his designee, to execute Standard Agreement No. LACO3066, Exhibit I, with the State of California Department of Corrections, to reimburse the Department of Health Services' LAC+USC Medical Center for inpatient services provided to an inmate referred from the California State Prison, effective August 6, 2003 through August 13, 2003, in an amount not to exceed \$42,574.
2. Delegate authority to the Director of Health Services, or his designee, to sign and accept on behalf of the County, standard agreements from the State Department of Corrections for outpatient and inpatient services at Department of Health Services' facilities through September 30, 2008, following review and approval by County Counsel.
3. Delegate authority to the Director of Health Services, or his designee, to execute amendments to Standard Agreement LACO3037 or substantially similar agreements that incorporate new Board-approved rates on a regular basis through September 30, 2008, following review and approval by County Counsel.
4. Approve and instruct the Chairman to sign the attached Resolution (Attachment B) to allow the County to enter into a contract with the State of California, Department of Corrections and allow the Director of Health Services or his designee, to execute future contracts for outpatient and inpatient services and amendments that incorporate new Board-approved rates through September 30, 2008, following review and approval by County Counsel.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS:

The purpose of these recommended actions is to: 1) accept funding from the State Department of Corrections for inpatient care already provided to an inmate referred from the California State Prison (Prison); 2) delegate authority to the Director of Health Services (Director) or his designee to accept these Agreements in the future; and 3) delegate authority to the Director to request and accept Amendments from the Department of Corrections that allow the County to bill the Department of Corrections using the latest Board-approved rates. This expanded authority will provide for more timely acceptance of State funds and billing using the most current rates.

FISCAL IMPACT/FINANCING:

All services provided to Prison inmates at County facilities utilize existing resources and personnel on a fee-for-service basis. These Agreements and Amendments represent revenue to the County and there are no net County costs.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

On June 18, 2002, the Board approved Agreement No. LAC02009 with the State Department of Corrections. The Agreement authorized High Desert Health System (High Desert) to provide inpatient/outpatient health services as needed to inmates of the California State Prison, effective July 1, 2002 through March 31, 2004. Because High Desert ceased to provide inpatient services as of June 30, 2003, the inmate was transferred to LAC+USC Medical Center to receive the necessary services.

On March 16, 2004, the Board approved Standard Agreement No. LACO3037 with the Department of Corrections for outpatient services provided to inmates referred from the Prison, effective April 1, 2004 through September 30, 2006, and delegated authority to the Director to: 1) extend the term of the Agreement through September 30, 2008, and 2) accept and sign amendments that increase or decrease the allocation amount by a maximum of 25%, subject to review and approval by County Counsel. The additional delegation of authority to the Director will expedite processing of future agreements and reimbursement to the County by the State, and ensure timely use of the latest Board-approved rates for reimbursement of services.

In accordance with Government Code, Section 6254.14, all information related to this Agreement or subsequent amendment(s) is exempt from public disclosure for a period of one year after the execution date of this agreement or subsequent amendment(s). Information as to rates of payment related to this Agreement or subsequent amendment(s) is exempt from public disclosure for a period of four years after the execution date of this agreement or subsequent amendment(s).

This Agreement does not impact DHS' System Redesign as it generates revenue to the County.

County Counsel has reviewed and approved Standard Agreement LACO3066 (Exhibit I) as to form.

The Honorable Board of Supervisors
January 20, 2005
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Attachment B is the Board Resolution reflecting approval and authorization for the Director or his designee to sign Standard Agreement LAC03066 with the Department of Corrections, and to sign future similar Agreements and amendments to agreements for the purpose of incorporating the latest Board-approved rates, following review and approval of County Counsel.

CONTRACTING PROCESS:

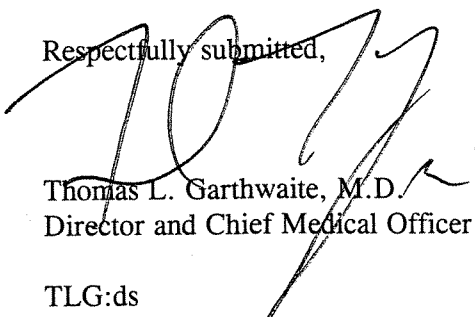
Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS):

Approval of the recommended actions will enable the Department to continue accepting referrals from the Prison for inmates requiring outpatient and inpatient medical services, and to receive appropriate reimbursement for the services provided.

When approved, this Department requires four signed copies of the Board's action.

Respectfully submitted,



Thomas L. Garthwaite, M.D.
Director and Chief Medical Officer

TLG:ds

Attachment (1)

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors

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SUMMARY OF STANDARD AGREEMENT

1. **TYPE OF SERVICE:**

LAC+USC Medical Center provided inpatient health care services for an inmate referred from the California State Prison.

2. **AGENCY ADDRESS AND CONTRACT PERSON:**

Department of Corrections
Office of Contract Services, Institution Contracts Section
P.O. Box 942883
Sacramento, CA 94283-0001
Contact Person: Myrna Z. Collart, Contract Analyst
Telephone: (916) 323-9091

Agreement No. LAC03066

3. **TERM:**

August 6, 2003 through August 13, 2003. The delegated authority to the Director of Health Services will allow the Director to execute future agreements or amendments that incorporate new Board-approved rates through September 30, 2008.

4. **FINANCIAL INFORMATION:**

LAC03066: \$42,574. All services are provided utilizing existing Department of Health Services resources and personnel on a fee-for-service basis. This Agreement represents revenue to the County and there are no net County costs.

In accordance with Government Code Section 6254.14, all information related to this Agreement or subsequent amendment(s) is exempt from public disclosure for a period of one year following the date of execution. Moreover, rate information related to this Agreement or subsequent amendment(s) is exempt from public disclosure for a period of four (4) years after the execution date of this agreement or subsequent amendments.

5. **GEOGRAPHIC AREA TO BE SERVED:**

First and Fifth Supervisorial Districts

6. **ACCOUNTABLE FOR MONITORING AND EVALUATION:**

Pete Delgado, CEO, LAC+USC Medical Center
Beryl R. Brooks, Acting CEO, High Desert Health System

7. **APPROVALS:**

LAC+USC Medical Center:	Pete Delgado, Chief Executive Officer
High Desert Health System:	Beryl R. Brooks, Acting Chief Executive Officer
Contracts and Grants Division:	Cara O'Neill, Chief
County Counsel (as to form):	Leela A. Kapur, Assistant County Counsel

RESOLUTION

The Board of Supervisors of the County of Los Angeles, at the meeting identified below, approved contracting between the County of Los Angeles and the State of California, Department of Corrections, for provision of medical care services to State of California prison inmates at High Desert Health System and LAC+USC Medical Center.

This Resolution authorizes the Director of Health Services, or his designee, to sign Agreement LAC03066, future Agreements for inpatient and outpatient services provided to inmates at Department of Health Services facilities, and subsequent amendments to Agreement LAC03037, for the purpose of incorporating Board-approved rates between the County of Los Angeles and the State of California, Department of Corrections.

Agreement LAC03066, effective August 6, 2003 through August 13, 2003, provides reimbursement for inpatient health care services provided to an inmate referred to LAC+USC Medical Center from the California State Prison, Los Angeles County.

In accordance with Government Code Section 6254.14 all information related to this agreement or subsequent amendment(s) is exempt from public disclosure for a period of one year after the execution date. Moreover, rate information related to this Agreement, or subsequent agreement or subsequent amendment(s), is exempt from public disclosure for a period of four (4) years after the execution date of Agreement or subsequent amendments.

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The foregoing resolution was on the _____ day of _____, 2005,
adopted by the Board of Supervisors of the County of Los Angeles and ex officio the
governing body of all other special assessment and taxing districts, agencies and authorities for
which said Board so acts.

COUNTY OF LOS ANGELES

By _____
Chair, Board of Supervisors of
Los Angeles County

Attest:

VIOLET VARONA-LUKENS, Executive Officer-
Clerk of the Board of Supervisors of
the County of Los Angeles

By _____
Deputy

APPROVED AS TO FORM
BY COUNTY COUNSEL

By Leela Kapur ^{for} SAR
Deputy

CONTRACT NUMBER	AM. NO.
LAC03066	
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER	
N/A	

THIS AGREEMENT, made and entered into this 6th day of August, 20 03, in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE	AGENCY	
Chief, Institution Medical Contracts Section	Department of Corrections	, hereafter called the State, and
CONTRACTOR'S NAME		
COUNTY OF LOS ANGELES		, hereafter called the Contractor.

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the State hereinafter expressed, does hereby agree to furnish to the State services and materials as follows: *(Set forth service to be rendered by Contractor, amount to be paid Contractor, time for performance or completion, and attach plans and specifications, if any.)*

County of Los Angeles, hereafter known as the Provider, agrees to provide Inpatient/Outpatient/Emergency Health Care Services to inmates/patients referred by the State of California, Department of Corrections, **California State Prison-Los Angeles County (LAC)**, hereafter known as the State. **This Contract is not exclusive and CDC reserves the right to contract with other providers for the same service.**

Services shall be provided only when and if **California State Prison-Los Angeles County (LAC)** is unable to provide the same services and only when requested and authorized in writing by the Warden or his/her designee.

The term of this contract is for the period **August 6, 2003 through August 13, 2003.**

The total amount of this contract shall not exceed the sum of **Forty Two Thousand Five Hundred Seventy Four Dollars and No Cents (\$42,574.00).**

CONFIDENTIAL

CONTINUED ON 26 SHEETS, EACH BEARING NAME OF CONTRACTOR AND CONTRACT NUMBER.

The provisions on the reverse side hereof constitute a part of this agreement.
IN WITNESS WHEREOF, this agreement has been executed by the parties hereto, upon the date first above written.

STATE OF CALIFORNIA		CONTRACTOR	
AGENCY	Department of Corrections	CONTRACTOR (If other than an individual, state whether a corporation, partnership, etc.)	COUNTY OF LOS ANGELES
BY (AUTHORIZED SIGNATURE)		BY (AUTHORIZED SIGNATURE)	
PRINTED NAME OF PERSON SIGNING	Debra L. Smith	PRINTED NAME AND TITLE OF PERSON SIGNING	Fred Leaf, Chief Operating Officer
TITLE	Chief, Institution Medical Contracts Section	ADDRESS	313 North Figueroa, Los Angeles, CA 90012 (323) 890-7615

Department of General Services
Use Only

STANDARD AGREEMENT

STD. 2 (REV. 5-91) (REVERSE) CDC ELECTRONIC (1/94)

County of Los Angeles

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Contract No. LAC03066

1. The Contractor, and the agents and employees of Contractor, in the performance of the agreement, shall act in an independent capacity and not as officers or employees or agents of State of California.
2. The State may terminate this agreement and be relieved of the payment of any consideration to Contractor should. Contractor fail to perform the covenants herein contained at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. The cost to the State shall be deducted from any sum due the Contractor under this agreement, and the balance, if any, shall be paid the Contractor upon demand.
3. Without the written consent of the State, this agreement is not assignable by Contractor either in whole or in part.
4. Time is of the essence in this agreement.
5. No alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, shall be binding on any of the parties hereto.
6. The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

CONFIDENTIAL

AMOUNT ENCUMBERED BY THIS DOCUMENT	PROGRAM/CATEGORY (CODE AND TITLE)		FUND TITLE	
\$42,574.00	(OPTIONAL USE)			
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT	3200/20302			
\$0.00	ITEM	CHAPTER	STATUTE	FISCAL YEAR
TOTAL AMOUNT ENCUMBERED TO DATE	5240-001-0001-5283	157	2003	2003/04
\$42,574.00	OBJECT OF EXPENDITURE (CODE AND TITLE)			
	413.02 Health & Medical Contractual/Ext.			
I hereby certify upon my own personal knowledge that budgeted funds are available for the period and purpose of the expenditure stated above.		T.B.A. NO.	B.R. NO.	
SIGNATURE OF ACCOUNTING OFFICER			DATE	
X				

Payment for Services

The State agrees to pay the Contractor **100 % of billed charges** said services as of commencement of this contract. Provider's established rates shall be held on file at the institution and shall remain in effect for the duration of this contract. Provider's rates are incorporated by reference as part of this contract.

Payment will be made upon submission of itemized invoices in triplicate. Invoices shall include:

1. Provider's name, address and contract number;
2. Name of referring physician and institution;
3. Inmate/patient's name(s) and CDC number(s);
4. Date(s) of service(s), type(s) of service(s) (ICD-9-CM and RVP procedures codes); and
5. Patient Discharge Data form (CDC 7296) (**Attachment A**)

Invoices submitted for payment must be legible and accurate. Invoices that have been altered or are inaccurate and do not provide the above information shall not be accepted and shall be returned to the Provider for correction.

Invoices shall be mailed to:

**Bakersfield Regional Accounting Office
for California State Prison-Los Angeles County (LAC)
P. O. Box 12050
Bakersfield, CA 93389**

Payment will be made in accordance with and within the time specified in Government Code Section 927 et seq. Payment to certified small businesses shall be made in accordance with and within the time specified in Government Code Section 927 et seq.

It is mutually agreed that if the California State Budget Act for the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, the State shall have no liability to pay any funds whatsoever to Contractor, or to furnish any other considerations under this Agreement, and Contractor shall not be obligated to perform any provisions of this Agreement.

If funding for the purposes of this program is reduced or deleted for any fiscal year by the California State Budget Act, the State shall have the option to either cancel this Agreement with no liability occurring to the State, or offer an Agreement amendment to Contractor to reflect the reduced amount.

DEPARTMENT OF CORRECTIONS CONTACT INFORMATION

Should questions or problems arise during the term of this contract, the contractor should contact the following offices:

Billing/Payment Issues:

- Bakersfield Regional Accounting Office
Phone Number: (661) 334-3730
FAX Number: (661) 334-3720

Scope of Service/Performance Issues:

- California State Prison-Los Angeles County (LAC)-Medical Department
Phone Number: (661) 729-2000 ext. 7811
FAX Number: (661) 729-6909

General Contract Issues:

- Office of Contract Services
Phone Number: (916) 323-8718
FAX Number: (916) 323-2292

Indemnification

Provider shall indemnify, defend, and save harmless the State, CDC, and CDC's officers, employees and agents against any and all losses, liabilities, settlements, claims, demands, damages, or deficiencies, including interest, and expenses of any kind including, but not limited to, attorneys' fees, arising out of or due to a breach of any representation or warranty, covenant, or agreement of Provider contained in this contract, and arising out of Provider's acts or omissions in regard to provision of services under the terms of this contract. The foregoing indemnity is in addition to any other save harmless or indemnification set forth in this contract.

Prior Authorization for Treatment

Provider agrees that before inpatient services can be performed, a prior authorization form must be documented in the inmate/patient's medical file. Provider agrees that under no circumstances shall the absence of a prior authorization form prevent an inmate from receiving emergency medical services.

Provider agrees that, excluding emergency care services, prior authorization must be obtained in writing from the institution Chief Medical Officer (CMO) or his/her designee in all cases of essential and non-essential/elective services before considering any non-emergency treatment, or any inpatient/outpatient consultations by specialty physicians or diagnostic procedures not specifically stated on the prior authorization form. Receipt of prior authorization shall be a condition of CDC's obligation to pay for services provided for under this contract. Payment shall be denied if CDC determines that inpatient services or procedures performed were not medically necessary, were delivered inefficiently, or did not have prior authorization.

Bloodborne Pathogens and Tuberculosis

The Provider must adhere to CAL-OSHA regulations and guidelines pertaining to bloodborne pathogens and tuberculosis.

Audits

The Provider shall be subject to the examination and audit of the State Auditor for a period of three years after final payment under the contract in accordance with Government Code Section 8546.7. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the contract.

National Labor Relations Board Certification

Provider by signing this contract does swear under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against Provider within the immediately preceding two-year period because of Provider's failure to comply with an order of a federal court which ordered the Provider to comply with an order of the National Labor Relations Board (Public Contract Code Section 10296).

Nondiscrimination Clause

During the performance of this contract, Provider and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Providers and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Providers and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this contract by reference and made a part hereof as set forth in full. Provider and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

This Provider shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Statement of Compliance

For contracts over \$5,000.00, the Provider certifies under penalty of perjury under the laws of the State of California, unless specifically exempted, compliance with Government Code Section 12990 and California Code of Regulations, Title 2, Division 4, Chapter 5, in matters relating to the development, implementation and maintenance of a nondiscrimination program.

Drug-Free Workplace Certification

By signing this contract, the Provider hereby certifies under penalty of perjury under the laws of the State of California that the Provider will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350, et seq.) and will provide a drug-free workplace by taking the following actions:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
2. Establish a Drug-Free Awareness Program to inform employees about:
 - a. The dangers of drug abuse in the workplace,
 - b. The person's or organization's policy of maintaining a drug-free workplace,
 - c. Any available counseling, rehabilitation and employee assistance programs, and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Every employee who works on the proposed contract will:
 - a. Receive a copy of the company's drug-free policy statement, and
 - b. Agree to abide by the terms of the company's statement as a condition of employment on the contract.

Failure to comply with these requirements may result in suspension of payments under the contract or termination of the contract or both and the Provider may be ineligible for award of any future State contracts if the Department determines that any of the following has occurred: (1) the Provider has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

Independent Contractor

All services provided by the Provider under this contract shall be performed in an independent contractor capacity. The Provider shall be responsible for withholding all applicable employee taxes.

Reportable Payment Identification and Classification Requirements

Provider shall comply with State and Federal Reportable Payment Identification and Classification Requirements by fully completing the "Payee Data Record." Provider understands and agrees that if he/she does not fully complete the Payee Data Record, the State shall reduce the total contract amount by thirty-one (31) percent for federal backup withholding and seven (7) percent for State income tax withholding.

Contract Termination

This contract may be amended or canceled at any time by mutual written agreement of the two parties involved. It may be canceled by either party delivering written notice of termination to the other party at least 30 days prior to the effective cancellation date.

Alternative Arrangements Upon Termination

Upon cancellation of this contract, Provider agrees to assist CDC in securing alternative arrangements for the provision of care from another CDC contracted facility for those inmates receiving inpatient care at the time of termination. Provider further agrees to continue to provide adequate levels of health care services to inmates until alternative arrangements can be obtained. The rate of pay shall be consistent with the terms of this contract.

Termination of Obligations

All obligations to provide services under this contract shall automatically cease to exist as of the effective cancellation or expiration date of this contract pursuant to the terms of this article with the exception of those services agreed to in Alternative Arrangements Upon Termination. The Provider shall be responsible for providing services until the expiration or cancellation of this contract. The Provider shall remain liable for the processing and submission of all invoices for payment to CDC. Invoices shall be submitted no later than 30 days after services have been provided. Invoices submitted after that date shall not be honored.

Resolution of Disputes

Both parties hereto mutually agree that the resolution of any claims or disputes arising under this contract shall be resolved pursuant to the provisions of the California Department of Corrections Operations Manual (DOM).

Governing Forum

This contract shall be interpreted, administered and enforced according to the laws of the State of California (without regard to any conflict-of-laws provision), except as preempted by federal law. Any suit brought hereunder shall be brought in the State and federal courts sitting in Sacramento, California, the parties hereby waiving any claim or defense that any such forum is not convenient or proper. Each party agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

Insurance Requirements

Self-insured public entities MUST provide proof of self-insurance.

Provider hereby represents and warrants that Provider is currently and shall for the duration of this contract, remain at Provider's own expense, insured against:

Commercial General Liability- Provider agrees to carry a minimum of \$1,000,000 per occurrence for bodily injury and property damage liability combined (**not required for individual providers or if services are provided at the institution**);

The certificate of insurance **must** include the following provisions:

The insurer will not cancel the insured's coverage without 30 days prior written notice to the State. The California Department of Corrections must be named as the "Certificate Holder" and list the following:

State of California
California Department of Corrections (CDC)
Office of Contract Services

P. O. Box 942883
Sacramento, CA 942883-0001

Also, the certificate of insurance must include the following additional insured provision:

The State of California, its officers, agents, employees, and servants are hereby named as additional insured but only with respect to work performed for the State of California. (*Not required for Professional Liability Insurance*).

Auto Liability- Provider certifies that the Contractor and any employees, subcontractors or servants possess valid automobile coverage in accordance with California Vehicle Code Sections 16450 to 16457, inclusive. The State reserves the right to request proof of insurance at any time. Coverage shall be maintained throughout the term of this Agreement. In the event the Provider or any employee,

subcontractor or servant of the Contract fails to keep the proper insurance coverage in effect at all times, the State may, in addition to any other remedies it may have, terminate the contract.

Professional Liability- Contractor agrees to carry a minimum coverage of \$1,000,000 per claim up to an annual aggregate of \$3,000,000 for professional liability.

Such coverage(s) as referenced shall be a condition of the CDC's obligation to pay for services provided under this contract. Prior to approval of this contract and before performing any work Provider shall furnish to the State evidence of valid coverage. The following shall be considered evidence of coverage: a certificate of insurance, a "true and certified" copy of the policy, or any other proof of coverage issued by Provider's insurance carrier or proof of self-insurance. Binders are not acceptable as evidence of coverage per California Insurance Code, Section 382.5.

Providing evidence of coverage to the State does not convey any rights or privileges to the CDC. It does, however, serve to provide the State with proof that the Provider is insured up to the required minimums, as required by the State. By signing this contract, the Provider certifies that the professional liability insurance carrier has knowledge of the Provider's extension of services to CDC inmates. Such action conveys no coverage to the State under the Provider's policy nor does it insure any State employee or insure any premises owned, leased, or otherwise used by or under the control of the State with respect to coverage.

Provider agrees that the liability insurance herein provided for shall be in effect at all times during the term of this contract. In the event said insurance coverage expires or is canceled at any time during the term of this contract, Provider agrees to give, at least thirty (30) days prior notice to the State before said expiration date or immediate notice of cancellation. Evidence of coverage as provided for herein shall not be for less than the remainder of the term of the contract or for a period of not less than one year. CDC and the Department of General Services (DGS) reserve the right to verify the Provider's evidence of coverage; evidence of coverage is subject to the approval of the DGS. In the event the Provider fails to keep in effect at all times insurance coverage as herein provided, the State reserves the right to terminate this contract and seek any other remedies afforded by the laws of this State.

Workers' Compensation Insurance

Contractor hereby represents and warrants that Contractor is currently and shall, for the duration of this agreement, carry workers' compensation insurance, at Contractor's expense, or that it is self-insured through a policy acceptable to the CDC, for all of its employees who will be engaged in the performance of this agreement. Such coverage will be a condition of CDC's obligation to pay for services provided under this agreement.

Prior to approval of this agreement and before performing any work, Contractor shall furnish to the State evidence of valid workers' compensation coverage. Contractor agrees that the workers' compensation insurance shall be in effect at all times during the term of this agreement. In the event said insurance coverage expires or is canceled at any time during the term of this agreement, Contractor agrees to give at least thirty (30) days prior notice to CDC before said expiration date or immediate notice of cancellation. Evidence of coverage shall not be for less than the remainder of the term of the agreement or for a period of not less than one year. The State reserves the right to verify the Contractor's evidence of coverage. In the event the Contractor fails to keep workers' compensation insurance coverage in effect at all times, the State reserves the right to terminate this agreement and seek any other remedies afforded by the laws of this State.

Contractor also agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all of Contractor's workers' compensation claims and losses by Contractor's officers, agents and employees related to the performance of this agreement.

Recycle Content

Should materials, goods, supplies offered, or products be used in the performance of this contract, the contractor by signing this contract hereby certifies that the materials, goods, supplies offered, or products meets or exceeds the minimum percentage of recycled material as defined in Section 12205 of the Public Contract Code.

Computer Software

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

Confidentiality of Information

CDC and Provider agree that all inmate/patient medical record information is identified as confidential and shall be held in trust and confidence and shall be used only for the purposes contemplated under this Agreement.

Provider by acceptance of this contract is subject to all of the requirements of the federal regulations implementing the Health Insurance Portability and Accountability Act of 1996 (Code of Federal Regulations (CFR), Title 45, Sections 164.501 et seq.); the California Government Code Section 11019.9; California Civil Code Sections 56 et seq.; and California Civil Code Sections 1798, et seq.; regarding the collections, maintenance, and disclosure of personal and confidential information about individuals.

Union Organizing

Contractor by signing this agreement hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this agreement.

- 1) Contractor will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- 2) No state funds received under this agreement will be used to assist, promote or deter union organizing.
- 3) Contractor will not, for any business conducted under this agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the state property is equally available to the general public for holding meetings.
- 4) If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that Contractor shall provide those records to the Attorney General upon request.

Union Activities

Contractor hereby certifies that no request for reimbursement, or payment under this agreement, will seek reimbursement for costs incurred to assist, promote or deter union organizing.

Air Or Water Pollution Violation

Under the State laws, the Contractor shall not be:

- (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district;
- (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or
- (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

Conflict Of Interest

The Contractor and their employees shall abide by the provisions of Government Code (GC) Sections 1090, 81000 et seq., 82000 et seq., 87100 et seq., and 87300 et seq., Public Contract Code (PCC) Sections 10335 et seq. and 10410 et seq., California Code of Regulations (CCR), Title 2, Section 18700 et seq. and Title 15, Section 3409, and the Department Operations Manual (DOM) Section 31100 et seq. regarding conflict of interest.

Contractors and Their Employees:

Consultant Contractors shall file a Statement of Economic Interests, (FPPC Form 700) prior to commencing services under the contract, annually during the life of the contract, and within 30 days after the expiration of the contract. Other service contractors and/or certain of their employees may be required to file a Form 700 if so requested by the CDC or whenever it appears that a conflict of interest may be at issue. Generally, service contractors (other than consultant contractors required to file as above) and their employees shall be required to file a Form 700 if one of the following exists:

- (1) The contract service has been identified by the CDC as one where there is a greater likelihood that a conflict of interest may occur;
- (2) The contractor and/or contractor's employee(s), pursuant to the contract, makes or influences a governmental decision; or
- (3) The contractor and/or contractor's employee(s) serves in a staff capacity with the CDC and in that capacity participates in making a governmental decision or performs the same or substantially all the same duties for the CDC that would otherwise be performed by an individual holding a position specified in the CDC's Conflict of Interest Code.

Current State Employees:

- (1) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- (2) No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
- (3) In addition to the above, CDC officials and employees shall also avoid actions resulting in or creating an appearance of:
 - (a) Using an official position for private gain;
 - (b) Giving preferential treatment to any particular person;
 - (c) Losing independence or impartiality;
 - (d) Making a decision outside of official channels; and
 - (e) Affecting adversely the confidence of the public or local officials in the integrity of the program.
- (4) Officers and employees of the Department must not solicit, accept or receive directly or indirectly, any fee, commission, gratuity or gift from any person or business organization doing or seeking to do business with the state.

Former State Employees:

- (1) For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- (2) For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he

or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

In addition to the above, the Contractor shall avoid any conflict of interest whatsoever with respect to any financial dealings, employment services, or opportunities offered to inmates or parolees. The Contractor shall not itself employ or offer to employ inmates or parolees either directly, or indirectly through an affiliated company, person or business unless specifically authorized in writing by the CDC. In addition, the Contractor shall not (either directly, or indirectly through an affiliated company, person or business) engage in financial dealings with inmates or parolees, except to the extent that such financial dealings create no actual or potential conflict of interest, are available on the same terms to the general public, and have been approved in advance in writing by the CDC. For the purposes of this paragraph, "affiliated company, person or business" means any company, business, corporation, non-profit corporation, partnership, limited partnership, sole proprietorship, or other person or business entity of any kind which has any ownership or control interest whatsoever in the Contractor, or which is wholly or partially owned (more than 5% ownership) or controlled (any percentage) by the Contractor or by the Contractor's owners, officers, principals, directors and/or shareholders, either directly or indirectly. "Affiliated companies, persons or businesses" include, but are not limited to, subsidiary-, parent-, or sister-companies or corporations, and any company, corporation, non-profit corporation, partnership, limited partnership, sole proprietorship, or other person or business entity of any kind that is wholly- or partially- owned or controlled, either directly or indirectly, by the Contractor or by the Contractor's owners, officers, principals, directors and/or shareholders.

The contractor shall have a continuing duty to disclose to the State in writing all interests and activities that create an actual or potential conflict of interest in performance of the contract.

The Contractor shall have a continuing duty to keep the State timely and fully apprised in writing of any material changes in the Contractor's business structure and/or status. This includes any changes in business form, such as a change from sole proprietorship or partnership into a corporation or vice-versa; any changes in company ownership; any dissolution of the business; any change of the name of the business; any filing in bankruptcy; any revocation of corporate status by the Secretary of State; and any other material changes in the Contractor's business status or structure that could affect the performance of the Contractor's duties under the contract.

If the Contractor violates any provision of the above paragraphs, such action by the Contractor shall render this Agreement void.

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem.

ATTACHMENT A

CDC Patient Discharge Data Form (CDC 7296)

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

PATIENT DISCHARGE DATA

CDC 7296 (Rev 8/95)

PLEASE COMPLETE THIS FORM (CDC 7296), ATTACH THE BILL, AND
FORWARD TO THE INSTITUTION RESPONSIBLE FOR PAYMENT

1. PATIENT'S NAME (LAST, FIRST, MI)		2. TOTAL CHARGES	
3. CDC NUMBER	4. DATE OF BIRTH (MM/DD/YY)	5. SEX (ENTER NUMBER) 1=M 2=F <input type="checkbox"/>	
6. RACE (ENTER APPROPRIATE ONE DIGIT CODE) <input type="checkbox"/>	1 = WHITE 2 = BLACK 3 = HISPANIC 4 = NATIVE AMERICAN 5 = ASIAN 6 = OTHER 7 = UNKNOWN		
7. ADMISSION DATE (MM/DD/YY)		8. DISCHARGE DATE (MM/DD/YY)	

☐☐

9. SOURCE OF ADMISSION (ENTER APPROPRIATE TWO DIGIT CODE FROM LIST BELOW)

01 = AVENAL STATE PRISON
02 = CA CORRECTIONAL CENTER, SUSANVILLE
03 = CA CORRECTIONAL INSTITUTION, TEHACHAPI
04 = CA INSTITUTION FOR MEN, CHINO
05 = CA INSTITUTION FOR WOMEN, FRONTERA
06 = CA MEDICAL FACILITY, VACAVILLE
07 = CA MEN'S COLONY, SAN LUIS OBISPO
08 = CA REHABILITATION CENTER, NORCO
09 = CA STATE PRISON, CORCORAN
10 = CA STATE PRISON, SACRAMENTO
11 = CA STATE PRISON, SAN QUENTIN
12 = CENTRAL CA WOMEN'S FACILITY, CHOWCHILLA
13 = CHUCKAWALLA VALLEY STATE PRISON, BLYTHE
14 = CORRECTIONAL TRAINING FACILITY, SOLEDAD
15 = DEUEL VOCATIONAL FACILITY, TRACY
16 = MULE CREEK STATE PRISON, IONE

17 = NORTHERN CA WOMEN'S FACILITY, STOCKTON
18 = PELICAN BAY STATE PRISON, CRESCENT CITY
19 = R.J. DONOVAN CORRECTIONAL FACILITY, SAN DIEGO
20 = SIERRA CONSERVATION CENTER, JAMESTOWN
21 = NORTH KERN STATE PRISON, DELANO
22 = CALIPATRIA STATE PRISON
23 = WASCO STATE PRISON
24 = CA STATE PRISON, SOLANO
25 = CA STATE PRISON, LOS ANGELES COUNTY
26 = FOLSOM STATE PRISON
27 = PLEASANT VALLEY STATE PRISON, COALINGA
28 = IRONWOOD STATE PRISON, BLYTHE
29 = CENTINELA STATE PRISON
30 = VALLEY STATE PRISON FOR WOMEN, MADERA
31 = HIGH DESERT STATE PRISON, SUSANVILLE
32 = SALINAS VALLEY STATE PRISON, SOLEDAD
99 = OTHER (SPECIFY) _____

10. TYPE OF ADMISSION (ENTER
APPROPRIATE ONE DIGIT CODE)☐

1 = EMERGENCY

2 = URGENT

3 = ELECTIVE

4 = DELIVERY

DIAGNOSIS

PROCEDURES

11. PRINCIPLE DIAGNOSIS CODE (ICD - 9 - CM)	12. PRINCIPLE PROCEDURE CODE (ICD - 9 - CM)	DATE (MM/DD/YY)
13. OTHER DIAGNOSES CODE(S) (ICD - 9 - CM)	14. OTHER PROCEDURES CODE(S) (ICD - 9 - CM)	DATE (MM/DD/YY)

15. TYPE OF SERVICE
(ENTER ONE DIGIT CODE)☐1 = MEDICAL
4 = GYN2 = SURGICAL
5 = PSYCH3 = OB
6 = DENTAL6. DISCHARGE DISPOSITION
(ENTER ONE DIGIT CODE)

1 = DISCHARGE TO CDC FACILITY - ENTER FACILITY
2 = DISCHARGE TO ANOTHER COMMUNITY FACILITY
3 = DISCHARGE TO PAROLES
4 = DIED
5 = OTHER, SPECIFY _____

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BUSINESS ASSOCIATES AGREEMENT (HIPAA)

WHEREAS, Provider, hereinafter referred to in this Exhibit as "Business Associate," acknowledges that the CDC, hereinafter referred to in this Exhibit as "Covered Entity," has in its possession data that contains individual identifiable health information as defined by Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 ("HIPAA") and the regulations promulgated thereunder;

WHEREAS, Business Associate and Covered Entity acknowledge that the fulfillment of the Parties' obligations under this Service Agreement necessitates the exchange of, or access to, data including individual identifiable health information; and,

WHEREAS, the parties desire to comply with federal and California laws regarding the use and disclosure of individually identifiable health information, and in particular with the provisions of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, the Parties agree as follows:

**ARTICLE 1
DEFINITIONS**

Terms used, but not otherwise defined, in this Exhibit shall have the meanings set forth below.

- 1.1 "HHS Transaction Standard Regulation" means the Code of Federal Regulations ("CFR") at Title 45, Sections 160 and 162.
- 1.2 "Individual" means the subject of protected health information (PHI) or, if deceased, his or her personal representative.
- 1.3 "Parties" shall mean the Covered Entity and Business Associate. (Covered Entity and Business Associate, individually, may be referred to as a "Party".)
- 1.4 "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 1.5 "PHI" shall have the same meaning as the term "protected health information in 45 CFR §164.501, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.
- 1.6 "Required By Law" shall have the same meaning as "required by law" in 45 CFR §164.501.
- 1.7 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

Any other terms used, but not otherwise defined, in this Exhibit shall have the same meaning as those terms in the Privacy Rule.

ARTICLE 2
CONFIDENTIALITY

2.1 Obligations and Activities of Business Associate. Business Associate agrees as follows:

- (a) not to use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law;
- (b) to establish, maintain, and use appropriate safeguards to prevent use or disclosure of the PHI other than as permitted herein;
- (c) to report to Covered Entity any use, access or disclosure of the PHI not provided for by this Agreement, or any misuse of the PHI, including but not limited to systems compromises of which it becomes aware and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate as a result thereof. Business Associate shall be responsible for any and all costs (including the costs of Covered Entity) associated with mitigating or remedying any violation of this Agreement;
- (d) to enforce and maintain appropriate policies, procedures, and access control mechanisms to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. The access and privileges granted to any such agent shall be the minimum necessary to perform the assigned functions;
- (e) to provide access, at the request of Covered Entity, and in the time and manner reasonable designated by Covered Entity, to PHI in a Designated Record Set (as defined in the Privacy Rule), to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524;
- (f) to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably requested by Covered Entity.
- (g) to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner reasonably requested by Covered Entity or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (h) to document such disclosures of PHI, and information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528. Said documentation shall include, but not be limited to, the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure. Said documentation shall be made available to Covered Entity upon request.
- (i) to provide to Covered Entity or an Individual, in a time and manner reasonably requested by Covered Entity, information collected in accordance with Section 2.1(h) above to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528.
- (j) to promptly notify Covered Entity of all actual or suspected instances of deliberate unauthorized attempts (both successful and unsuccessful) to access

PHI. Such notice shall be made to Covered Entity by telephone as soon as Business Associate becomes aware of the unauthorized attempt, and this telephone notification shall be followed within two (2) calendar days of the discovery of the unauthorized attempt by a written report to Covered Entity from Business Associate. Business Associate shall, at the same time, report to Covered Entity any remedial action taken, or proposed to be taken, with respect to such unauthorized attempt. Covered Entity shall have the discretion to determine whether or not any such remedial action is sufficient, and all such remedial action shall be at Business Associate's expense.

- (k) to maintain and enforce policies, procedures and processes to protect physical access to hardware, software and/or media containing PHI (e.g., hardcopy, tapes, removable media, etc.) against unauthorized physical access during use, storage, transportation, disposition and /or destruction.
- (l) to ensure that access controls in place to protect PHI and processing resources from unauthorized access are controlled by two-factor identification and authentication: a user ID and a Token, Password or Biometrics.
- (m) to implement, use and monitor its compliance with appropriate technological, administrative and physical safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement. Business Associate shall provide Covered Entity with evidence of such safeguards upon Covered Entities request. Covered Entity has the right to determine, in its sole discretion, whether such safeguards are appropriate, and to require any additional safeguards it deems necessary.
- (n) In the event that Business Associate is served with legal process (e.g. a subpoena) or request from a governmental agency (e.g. the Secretary) that potentially could require the disclosure of PHI, Business Associate shall provide prompt (i.e., within twenty-four (24) hours) written notice of such legal process (including a copy of the legal process served) to the designated person at the Covered Entity. In addition, Business Associate shall not disclose the PHI without the consent of Covered Entity unless pursuant to a valid and specific court order or to comply with a requirement for review of documents by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.
- (o) to submit to periodic audits by Covered Entity verifying Business Associate's compliance with appropriate technological, administrative and physical safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement, as well as compliance with the terms and conditions pursuant to this Agreement and compliance with state and federal laws and regulations. Audit review may be undertaken directly by the Covered Entity or by third parties engaged by the Covered Entity. Business Associate shall cooperate fully with Covered Entity or any such third party in connection with such audits.

2.2 Disclosures Required By Law.

In the event that Business Associate is required by law to disclose PHI, Business Associate will immediately provide Covered Entity with written notice and provide Covered Entity an opportunity to oppose any request for such PHI or to take whatever action Covered Entity deems appropriate.

2.3 Specific Use and Disclosure Provisions.

- (a) Except as otherwise limited in this Agreement, Business Associate may use PHI only to carry out the legal responsibilities of the Business Associate under this Service Agreement.
- (b) Except as otherwise limited in this Agreement, Business Associate may only disclose PHI (i) as Required By Law, or (ii) in the fulfillment of its obligations under the Service Agreement and provided that Business Associate has first obtained (A) the consent of Covered Entity for such disclosure, (B) reasonable assurances from the person to whom the information is disclosed that the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and (C) reasonable assurances from the person to whom the information is disclosed that such person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 Obligations of Covered Entity.

- (a) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosures of PHI.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (d) For any PHI received by Covered Entity from Business Associate on behalf of a third party or another covered entity, Covered Entity agrees to be bound to the obligations and activities of Business Associate enumerated in Section 2.1 as if and to the same extent Covered Entity was the named Business Associate hereunder.

2.5 Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

2.6 Policy and Procedure Review.

Upon request, Business Associate shall make available to Covered Entity any and all documentation relevant to the safeguarding of PHI including but not limited to current policies and procedures, operational manuals and/or instructions, and/or employment and/or third party agreements.

ARTICLE 3 SECURITY

3.1 Government Healthcare Program Representations.

Business Associate hereby represents and warrants to Covered Entity, its shareholders, members, directors, officers, agents, or employees have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by any federal, state or local government agency, (d) the unlawful, manufacture, distribution, prescription, or dispensing of a controlled substance, or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Business Associate further agrees to notify Covered Entity immediately after Business Associate becomes aware that the foregoing representation and warranty may be inaccurate or may be incorrect.

3.2 Security Procedures.

Each Party shall employ security procedures that comply with HIPAA and all other applicable state and federal laws and regulations (collectively, the "Law") and that are commercially reasonable, to ensure that transactions, notices, and other information that are electronically created, communicated, processed, stored, retained or retrieved are authentic, accurate, reliable, complete and confidential. Moreover, each Party shall, and shall require any agent or subcontractor involved in the electronic exchange of data to:

- (a) require its agents and subcontractors to provide security for all data that is electronically exchanged between Covered Entity and Business Associate;
- (b) provide, utilize, and maintain equipment, software, services and testing necessary to assure the secure and reliable transmission and receipt of data containing PHI;
- (c) maintain and enforce security management policies and procedures and utilize mechanisms and processes to prevent, detect, record, analyze, contain and resolve unauthorized access attempts to PHI or processing resources;
- (d) maintain and enforce policies and guidelines for workstation use that delineate appropriate use of workstations to maximize the security of data containing PHI;
- (e) maintain and enforce policies, procedures and a formal program for periodically reviewing its processing infrastructure for potential security vulnerabilities;

- (f) implement and maintain, and require its agents and subcontractors to implement and maintain, appropriate and effective administrative, technical and physical safeguards to protect the security, integrity and confidentiality of data electronically exchanged between Business Associate and Covered Entity, including access to data as provided herein. Each Party and its agents and subcontractors shall keep all security measures current and shall document its security measures implemented in written policies, procedures or guidelines, which it will provide to the other Party upon the other Party's request.

ARTICLE 4
EXCHANGE OF STANDARD TRANSMISSIONS

4.1 Obligations of the Parties. Each of the Parties agrees that for the PHI,

- (a) it will not change any definition, data condition or use of a data element or segment as proscribed in the HHS Transaction Standard Regulation.
- (b) it will not add any data elements or segments to the maximum denied data set as proscribed in the HHS Transaction Standard Regulation.
- (c) it will not use any code or data elements that are either marked "not used" in the HHS Standard's implementation specifications or are not in the HHS Transaction Standard's implementation specifications.
- (d) it will not change the meaning or intent of any of the HHS Transaction Standard's implementation specifications.

4.2 Incorporation of Modifications to HHS Transaction Standards.

Each of the Parties agrees and understands that from time-to-time, HHS may modify and set compliance dates for the HHS Transaction Standards. Each of the Parties agrees to incorporate by reference into this Agreement any such modifications or changes.

4.3 Code Set Retention.

If applicable, both parties understand and agree to keep open code sets being processed or used in this Agreement for at least the current billing period or any appeal period, which ever is longer.

4.4 Business Associate Obligations.

- (a) Business Associate shall not submit duplicate transmissions unless so requested by Covered Entity.
- (b) Business Associate shall only perform those transactions, which are authorized by Covered Entity. Furthermore, Business Associate assumes all liability for any damage, whether direct or indirect, to the electronic data or to Covered Entity's systems caused by Business Associate's unauthorized use of such transactions.
- (c) Business Associate shall hold Covered Entity harmless from any claim, loss or damage of any kind, whether direct or indirect, whether to person or property, arising out of or related to (1) Business Associate's use or unauthorized disclosure of the electronic data; or (2) Business Associate's submission of data, including but not limited to the submission of incorrect, misleading, incomplete or fraudulent data.

- (d) Business Associate agrees to maintain adequate back-up files to recreate transmissions in the event that such recreations become necessary. Back-up tapes shall be subject to this Agreement to the same extent as original data.
- (e) Business Associate agrees to trace lost or indecipherable transmissions and make reasonable efforts to locate and translate the same. Business Associate shall bear all costs associated with the recreation of incomplete, lost or indecipherable transmissions if such loss is the result of an act or omission of Business Associate.
- (f) Business Associate shall maintain, for seven (7) years, true copies of any source documents from which it produces electronic data.
- (g) Except encounter data furnished by Business Associate to Covered Entity, Business Associate shall not (other than to correct errors) modify any data to which it is granted access under this Agreement or derive new data from such existing data. Any modification of data is to be recorded, and a record of such modification is to be retained by Business Associate for a period of seven (7) years.
- (h) Business Associate shall not disclose security access codes to any third party in any manner without the express written consent of Covered Entity. Business Associate furthermore acknowledges that Covered Entity may change such codes at any time without notice. Business Associate shall assume responsibility for any damages arising from its disclosure of the security access codes or its failure to prevent any third party use of the system without the express written consent of Covered Entity.
- (i) Business Associate shall maintain general liability coverage, including coverage for general commercial liability, for a limit of not less than one million dollars, as well as other coverage as Covered Entity may require to compensate any parties damaged by Business Associate's negligence. Business Associate shall provide evidence of such coverage in the form of a certificate of insurance and agrees to notify Covered Entity and/or HOI immediately of any reduction or cancellation of such coverage.
- (j) Business Associate agrees to conduct testing with Covered Entity to ensure delivery of files that are HIPAA-AS Compliant and to accommodate Covered Entity's specific business requirements.

4.5 Confidential And Proprietary Information

- (a) Proprietary Information

Business Associate acknowledges that it will have access to certain proprietary information used in Covered Entity's business. Covered Entity's proprietary information derives its commercial value from the fact that it is not available to competitors or any third parties, and the disclosure of this information would or

could impair Covered Entity's competitive position or otherwise prejudice its ongoing business. Business Associate agrees to treat as confidential, and shall not use for its own commercial purpose or any other purpose, Covered Entity's proprietary information. Business Associate shall safeguard Covered Entity's proprietary information against disclosure except as may be expressly permitted herein. Such proprietary information includes, but is not limited to, confidential information concerning the business operations or practices of Covered Entity, including specific technology processes or capabilities.

**ARTICLE 5
MISCELLANEOUS**

5.1 Indemnification.

Business Associate shall indemnify, defend, and save harmless the State, CDC, and CDC's officers, employees and agents, against any and all losses, liabilities, settlements, claims, demands, damages, or deficiencies (including interest) and expenses of any kind (including, but not limited to, attorneys' fees) arising out of or due to a breach of the terms of this Exhibit to the Service Agreement, and arising out of Business Associate's acts or omissions in regard to the terms of this Exhibit to the Service Agreement. The foregoing indemnity is in addition to any other save harmless or indemnification set forth in this entire Agreement.

5.2 Term and Termination.

- (a) Term. The Term of this Agreement shall be effective as of the first date of commencement of services under this entire agreement, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- (b) Termination for Cause. Upon a material breach by Business Associate of its obligation hereunder, Covered Entity may (i) terminate this Agreement and the Service Agreement; (ii) permit Business Associate to cure the breach; (iii) report the violation to the Secretary; and/or (iv) require Business Associate to take such other action as Covered Entity may request, at Business Associate's expense.

Covered Entity's remedies under this paragraph shall be cumulative, and the exercise of any remedy shall not preclude the exercise of any other. If Covered Entity elects to terminate the Agreement pursuant to a breach of terms and conditions of this Exhibit, Covered Entity shall be relieved of any further obligations under the entire Agreement, and shall be immediately entitled to a refund of any amounts prepaid from the date of the termination through the end of the payment period, on a pro rata basis.

The foregoing termination language is in addition to any other termination language set forth in the entire agreement.

(c) Effect of Termination.

(i) Except as provided in paragraph 5.2(c)(ii), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.

(ii) In the event that Business Associate determines that returning the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

5.3 Disputes.

HIPAA Appeal Procedures

CDC has established and shall maintain an appeal procedure in accordance with CDC Department Operations Manual, Section 22040.16. Business Associate agrees that disputes arising under the terms of this Exhibit shall be resolved in accordance with the following:

1. Verbal Appeal

Business Associate and CDC's Privacy Officer, shall first attempt to resolve the problem by informal discussion. Business Associate agrees that CDC's Health Care Services Division shall be used as a resource in solving potential disputes.

2. Informal Appeal

If the issue is not resolved at the verbal appeal level, Business Associate shall file, within thirty (30) working days, an informal written appeal specifying: the issue(s) of dispute, legal authority or other basis for Business Associate's position, supporting evidence, and remedy sought, with the CDC Chief, Licensing and Information Systems, and provide a photocopy to the CDC Assistant Deputy Director, Office of Contract Services. The CDC Chief, Licensing and Information Systems, shall make a determination on the issue and respond in writing within thirty (30) working days of receipt of the informal appeal, indicating the decision reached.

3. Formal Appeal

Should Business Associate disagree with the informal appeal decision, Business Associate shall submit, within ten (10) working days after Business Associate's receipt of the decision of the informal appeal, to the CDC Deputy Director, Health Care Services Division, and a photo copy to the CDC, Assistant Deputy Director, Office of Contract Services, written notification indicating why the informal appeal decision is unacceptable, along with a copy of the original statement of dispute and a

copy of CDC's response. The CDC Deputy Director, Health Care Services Division, or his/her designee may meet with Business Associate to review the issues within twenty (20) working days of the receipt of Business Associate's notification and shall provide Business Associate with written notification of the decision within forty-five (45) working days from the receipt of the formal appeal.

The foregoing dispute process is solely for the purpose of disputes arising from the terms and conditions of this Exhibit. Disputes in relation to the scope of work and other terms and conditions shall be in accordance with any other dispute language set forth in the entire Agreement.

5.4 Injunctive Relief.

Notwithstanding any rights or remedies provided for in Section 5.3, Covered Entity retains all rights to seek injunctive relief to prevent the unauthorized use of disclosure of PHI by Business Associate or any agent, contractor or third party that received PHI from Business Associate.

5.5 Regulatory References.

A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

5.6 Amendment.

The Parties agree to take such action as is necessary to amend this Agreement from time to time to the extent necessary for Covered Entity to comply with the requirements of HIPAA and its regulations. All amendments to this Exhibit shall be in writing and signed by both parties through a formal amendment to the entire agreement.

5.7 Survival.

The respective rights and obligations of Business Associate and Covered Entity under Sections 4.5, 5.1 and 5.2(c) of this Agreement shall survive the termination of this Agreement.

5.8 Limitation of Damages.

Other than liabilities under Section 5.1, neither party shall be liable to the other for any special, incidental, exemplary, punitive or consequential damages arising from or as a result of any delay, omission, or error in the electronic transmission or receipt of any information pursuant to this Agreement, even if the other Party has been advised of the possibility of such damages.

5.9 Interpretation.

Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

5.10 Third Party Beneficiary

Unless otherwise set forth herein, nothing contained herein is intended, nor shall it be construed, to create rights running of the benefit of third parties.

5.11 Notices

Any HIPAA related notice required hereunder shall be deemed to be sufficient if mailed to the parties at the addresses below. In order to avoid unreasonable delay in the provision of the services to be rendered pursuant to this Agreement, Business Associate and Covered Entity shall each designate a specific "HIPAA" representative(s) for the purpose of communication between the parties. Such representative(s) may be changed upon written notice to the other party.

Business Associate:

County of Los Angeles
Fred Leaf, Chief Operating Officer
313 North Figueroa
Los Angeles, CA 90012

Telephone: (323) 890-7615
Facsimile: (323) 888-8558

Covered Entity:

California Department of Corrections
Privacy Officer
HIPAA Compliance Unit
Health Care Services Division
P.O. Box 942883
Sacramento, CA 94283-0001

Telephone: (916) 327-1842
Facsimile: (916) 327-0545